

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Runner Analyst: Jeff Garnier Bill Number: AB 628
Related Bills: See Prior Analysis Telephone: 845-5322 Amended Date: April 2, 2003
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Withholding on Sale of California Real Estate Not Required if Seller is a Sole Proprietor and a Licensed General Contractor

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 19, 2003, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would exempt an individual from the 3^{1/3}% real estate withholding requirement if:

- the individual selling the property certifies under penalty of perjury that he or she is a general contractor licensed to operate as a sole proprietor, and
- the real property is treated as inventory for income tax purposes in the hands of the seller.

SUMMARY OF AMENDMENT

The April 2, 2003, amendment expands the withholding exemption from the sale of residential housing to include the sale of any real property of a licensed general contractor operating as a sole proprietor held primarily for sale to customers in the ordinary course of the seller's trade or business as a sole proprietor. The amendment also requires the certification that the individual is a general contractor that is licensed to operate as a sole proprietor. The addition of the certification resolves the department's implementation concerns.

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director
Brian Putler

Date
4/25/03

The April 2, 2003, amendments addressed the department's implementation consideration discussed in the February 19, 2003, analysis.

ECONOMIC IMPACT

Tax Cash-flow Estimate:

This bill would result in cash-flow losses as follows:

Estimated Cash-Flow* Impact of AB 628 As Amended April 2, 2003 Effective for tax years BOA 1/1/2004 Enacted after 6/30/2003 \$ Millions			
2003-04	2004-05	2005-06	2006-07
-\$1	Minor loss+	Minor loss+	Minor loss+

* Ultimate tax liabilities are not affected, only the timing of payments.
+ Less than \$200,000.

Cash-Flow Estimate Discussion

This estimate does not account for changes in employment, personal income, or gross state product that could result from this measure.

This bill is expected to affect only the timing of payments, not ultimate tax liabilities. The bill also affects only builders who hold title of residential/nonresidential buildings at the time of escrow.

The cash-flow impact of this bill was derived as follows. First, the gross receipts of all sole proprietors with North American Industry Classification System (NAICS) code of 233200 (residential building construction) in 2000 were estimated using the department's personal income tax sample. This amount is extrapolated to 2004 based on projection of real estate growth. The gross cash-flow reduction is estimated as 3.3% of the qualified amount. This gross amount is adjusted downward for the qualifying amount, fiscal year differences, offsetting estimate payments under current law, and other prepayments.

Gross receipts of all sole proprietors with NAICS code of 233300 (nonresidential building construction) in 2000 is equal to about 10% of those of residential construction. Thus, the expansion of the exemption to cover nonresidential construction is expected to result in minor additional cash-flow losses relative to the original bill. Therefore, the "rounded" projections for the original bill still apply.

This cash-flow loss is largely a one-time event. The term "cash-flow" gain or loss means that while ultimate tax liabilities are not changed, the timing of tax payments through withholding relative to current law will be affected.

LEGISLATIVE STAFF CONTACT

Jeff Garnier
Franchise Tax Board
845-5322
jeff.garnier@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
brian.putler@ftb.ca.gov